

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

2

In the Matter of the Search of :
: **APPLICATION AND AFFIDAVIT**
2802 Concord Pike, Wilmington, DE 19803; : **FOR SEARCH WARRANTS**
3607 Kirkwood Highway, Wilmington, DE 19808; :
2911 Philadelphia Pike, Claymont, DE 19703; :
30 South Chapel Street, Newark, DE 19711; : Case No. *Mc 08-151*
101 N. Dupont Highway, New Castle, DE 19720; :
2960 Kirkwood Highway, Newark, DE 19711; and :
1530 N. Dupont Highway, New Castle, DE 19720 :

I, Kimberly Mullings, being duly sworn depose and say:

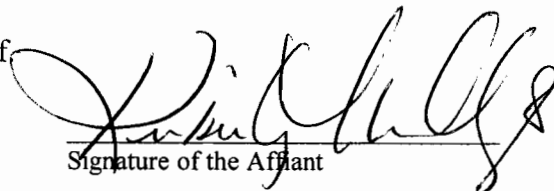
I am a Special Agent, United States Department of Homeland Security (ICE) and have reason to believe that on the premises known as 2802 Concord Pike, Wilmington, DE 19803; 3607 Kirkwood Highway, Wilmington, DE 19808; 2911 Philadelphia Pike, Claymont, DE 19703; 30 South Chapel Street, Newark, DE 19711; 101 N. Dupont Highway, New Castle, DE 19720; 2960 Kirkwood Highway, Newark, DE 19711; and 1530 N. Dupont Highway, New Castle, DE 19720 and further described in Attachment A incorporated herein by reference, in the District of Delaware, there is now concealed certain people, namely:

See Exhibits 1 through 7 incorporated herein by reference, which are evidence of violations of immigration laws by illegal aliens who are present in the United States.

The facts to support the issuance of the Search Warrants are as follows:

See Attached Affidavit incorporated herein by reference.

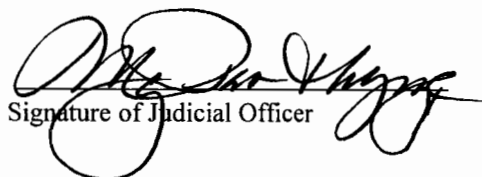
Continued on the attached sheet and made a part hereof.


Signature of the Affiant

Sworn before me, and subscribed in my presence

August 12, 2008 at Wilmington, Delaware.

Hon. Mary Pat Thyng, United States Magistrate Judge


Signature of Judicial Officer

**AFFIDAVIT OF SPECIAL AGENT KIMBERLY MULLINGS TO SUPPORT
SEARCH WARRANT**

Your affiant, Kimberly Mullings, being duly sworn, deposes and says as follows:

1. I am a Special Agent (SA) with the Department of Homeland Security (DHS), United States Immigration & Customs Enforcement (ICE) assigned to the Office of the Special Agent in Charge (SAC) Philadelphia Office. I have been a Special Agent for approximately three years and ten months. This affidavit is submitted to establish probable cause for a search of the premises of seven Burger King franchises in the state of Delaware for evidence of violations of immigration laws by illegal aliens who are present in the United States. Based upon my personal observation, interviews, consultation with other Agents, and a review of the records, I have learned the following facts:
2. This investigation originated from the ICE Headquarters Worksite Enforcement Unit (HQ WSE). HQ WSE developed a list of employers in high-risk industries that were the subject of prior leads indicating unauthorized employment and/or non-compliance with the Employment Eligibility Verification document (Form I-9) requirements. Burger King (franchise #2106, hereinafter #2106), located at 101 N. Dupont

Highway, New Castle, DE 19720 was on the HQ WSE list. Burger King (#2106) is in the SAC Philadelphia area of responsibility.

3. Burger King is a fast-food chain restaurant with franchises and corporate stores within the United States and abroad. On December 18, 2007, your affiant and SA Daniel Roman went to Burger King (#2106) to meet with owner/investor Gary Harting. SA Mullings served Mr. Harting with Notice of Inspection and a subpoena requesting "any and all records to include, but not limited to, DHS Form I-9 (Employment Eligibility Verification) with supporting documents used to verify employment eligibility; all Social Security Administration "Employer Correction Requests" and "Request for Employee Information" letters received from January 1, 2005 to the present; and corresponding payroll records from January 1, 2005 to the present."
4. On December 26, 2007, your affiant received copies of approximately twenty-eight Forms I-9, supporting documentation, a payroll register, and a Form G-28 (Notice of Entry of Appearance as Attorney or Representative) from Julie A. Pace of Ballard Spahr Andrews & Ingersoll, LLP in Phoenix, Arizona on behalf of Burger King (#2106).
5. Your affiant analyzed the alien registration numbers listed on the Forms I-9 received from Burger King (#2106). This analysis revealed that

approximately eighteen (sixty-four percent) of the twenty-eight Forms I-9 showed alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services (formerly the Immigration and Naturalization Service) or showed expired Employment Authorization Cards. These employees are listed on "Exhibit 5".

6. It is my experience, as well as the experience of other law enforcement officers involved in this investigation, that a sixty-four percent showing or irregularity is unusually high and when observed is often attributable to the illegal purchase and possession of certain identification documents. It is my experience, as well as the experience of other law enforcement officers involved in this investigation, that persons, usually aliens who are illegally present in the United States or who are not authorized employment in the United States, purchase identity documents, such as I-551's (green cards) and Social Security cards, that may belong to persons eligible to work in the United States. It is my experience, as well as the experience of other law enforcement officers involved in this investigation, that illegal aliens utilize these documents to gain employment. These offenses are possible violations of Title 18, United States Code, Section 1028 which makes it a crime to knowingly possess an identity document with the intent such document be used to defraud

the United States; Title 18, United States Code, Section 1546, which makes it a crime to use an identification document knowing that the document was not issued lawfully for the use of the possessor; and Title 18, United States Code, Section 1015(e), which makes it a crime to knowingly make a false statement and claim to be a national or citizen of the United States for the purpose of engaging in unlawful employment in the United States.

7. Based upon the high percentage of irregularity discovered in the Form I-9 audit of Burger King (#2106), HQ WSE directed your affiant to expand the Form I-9 audit to include six other Burger King franchises in which Gary Harting is an owner/investor: Burger King (#101), 2802 Concord Pike, Wilmington, DE 19803; Burger King (#466), 3607 Kirkwood Highway, Wilmington, DE 19808; Burger King (#684), 2911 Philadelphia Pike, Claymont, DE 19703; Burger King (#1068), 30 S. Chapel Street, Newark, DE 19711; Burger King (#2663), 2690 Kirkwood Highway, Newark, DE 19711; and Burger King (#3801), 1530 N. Dupont Highway, New Castle, DE 19720.
8. On February 4, 2008, your affiant served another Notice of Inspection and a subpoena to Julie Pace for records pertaining to the aforementioned Burger King locations in paragraph 7. On February 7,

2008, Arlene Angelo of Ballard Spahr Andrews & Ingersoll, LLP in Philadelphia, PA delivered the subpoenaed information to your affiant.

9. Your affiant analyzed the alien registration numbers listed on the Forms I-9 received from Burger King (#101). This analysis revealed that approximately eleven (forty-eight percent) of the twenty-three Forms I-9 showed alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, or showed expired employment authorization cards. These employees are listed on "Exhibit 1".

10. Your affiant analyzed the alien registration numbers listed on the Forms I-9 received from Burger King (#466). This analysis revealed that approximately nine (thirty-one percent) of the twenty-nine Forms I-9 showed alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, or showed expired employment authorization cards. These employees are listed on "Exhibit 2".

11. Your affiant analyzed the alien registration numbers listed on the Forms I-9 received from Burger King (#684). This analysis revealed that approximately eight (thirty-five percent) of the twenty-three Forms I-9 showed alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, or showed expired employment authorization cards. These employees are listed on "Exhibit 3".

12. Your affiant analyzed the alien registration numbers listed on the Forms I-9 received from Burger King (#1068). This analysis revealed that approximately ten (twenty-six percent) of the thirty-eight Forms I-9 showed alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, or showed expired employment authorization cards. These employees are listed on "Exhibit 4".

13. Your affiant analyzed the alien registration numbers listed on the Forms I-9 received from Burger King (#2663). This analysis revealed that approximately eleven (fifty-eight percent) of the nineteen Forms I-9


showed alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, or showed expired employment authorization cards. These employees are listed on "Exhibit 6".

14. Your affiant analyzed the alien registration numbers listed on the Forms I-9 received from Burger King (#3801). This analysis revealed that approximately eleven (forty-four percent) of the twenty-five Forms I-9 showed alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, or showed expired employment authorization cards. These employees are listed on "Exhibit 7".

15. Therefore your affiant, Special Agent Kimberly Mullings, has probable cause to believe that there exists on the premises of Burger King (#101), Burger King (#466), Burger King (#684), Burger King (#1068), Burger King (#2106), Burger King (#2663), and Burger King (#3801) illegal aliens and fraudulent identification documents. Wherefore, your affiant requests that judicial process be issued to her, or other such

Immigration and Customs Enforcement Officers as she may designate, authorizing her or them to enter Burger King (#101), 2802 Concord Pike, Wilmington, DE 19803; Burger King (#466), 3607 Kirkwood Highway, Wilmington, DE 19808; Burger King (#684), 2911 Philadelphia Pike, Claymont, DE 19703; Burger King (#1068), 30 S. Chapel Street, Newark, DE 19711; Burger King (#2106), 101 N. Dupont Highway, New Castle, DE 19720; Burger King (#2663), 2690 Kirkwood Highway, Newark, DE 19711; and Burger King (#3801), 1530 N. Dupont Highway, New Castle, DE 19720 and there to interrogate persons, and if necessary, to administratively arrest individuals who are illegally present and/or working in the United States pursuant to Title 8, United States Code, Section 1357.

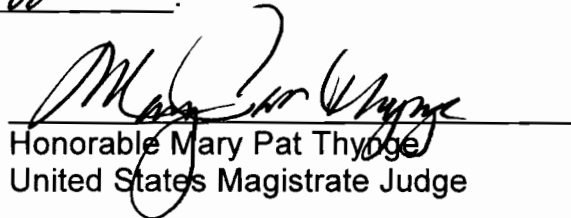
16. Your affiant, having signed this affidavit, under oath as to all assertions and allegations contained herein, states that its contents are true and correct to the best of your affiant's knowledge, information, and belief.



Kimberly Mullings, Special Agent
Department of Homeland Security
U.S. ICE

Sworn to before me and subscribed in my presence,

at Wilmington, Delaware on 8/8/08
City and State Date



Honorable Mary Pat Thyge
United States Magistrate Judge

EXHIBIT 1

Names that appear on Employment Eligibility Forms I-9 for employees of Burger King (#101), 2802 Concord Pike, Wilmington, DE 19803 that according to ICE indices, are using alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, or showed expired employment authorization cards.

1. Juan Barrera
2. Victor Catalan
3. Jaido Cardenas
4. Lourdes Cielo-Pastrana
5. Ana Corona
6. Rosa Embriz
7. Norma Fuerte
8. Rosa Monterrey
9. Jessica Rojas
10. Juan Ruiz
11. Maria Ruiz

EXHIBIT 2

Names that appear on Employment Eligibility Forms I-9 for employees of Burger King (#466), 3607 Kirkwood Highway, Wilmington, DE 19808 that according to ICE indices, are using alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, or showed expired employment authorization cards.

1. Dora Castillo-Mendez
2. Eduwiges Castro
3. Josefina Corona
4. Ana Embris
5. Olga Gonzalez
6. Guadalupe Ibanez Ortiz
7. Leticia Sauce Montes
8. Araceli Tlatenchi
9. Carmen Vazquez

EXHIBIT 3

Names that appear on Employment Eligibility Forms I-9 for employees of Burger King (#684), 2911 Philadelphia Pike, Claymont, DE 19703 that according to ICE indices, are using alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, or showed expired employment authorization cards.

1. Ana Acevedo
2. Julia Alvarez
3. Gabino Barrera
4. Francisco Barrera
5. Alfredo Barrera
6. Josefina Guerrero
7. Lucia Leana
8. Carmelo Tapia

EXHIBIT 4

Names that appear on Employment Eligibility Forms I-9 for employees of Burger King (#1068), 30 S. Chapel Street, Newark, DE 19711 that according to ICE indices, are using alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, or showed expired employment authorization cards.

1. Pablo Barrera
2. Rosalba Calvo
3. Rosa Renderos
4. Vanesa Castro-Mendoza
5. Carlos Escobar
6. Christian Ramirez
7. Tomas Sandoval
8. Benjamin Soria
9. Antonio Amaro-Torres
10. Maria Valadez

EXHIBIT 5

Names that appear on Employment Eligibility Forms I-9 for employees of Burger King (#2106), 101 N. Dupont Highway, New Castle, DE 19720 that according to ICE indices, are using alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, or showed expired employment authorization cards.

1. Emelia Alvarez
2. Grisel Ballina Alvares
3. Jose Cruz
4. Elvira Cuba Gordillo
5. Selene Haydet Flores
6. Leobardo Garcia Arroyo
7. Alejandro Jurado Gutierrez
8. Ana Ledesma
9. Rosalba Quezada Ruiz
10. Laura Escobar Ramirez
11. Gladis Ramirez Ramirez
12. Maricela Salinas
13. Leticia Salinas Garcia

EXHIBIT 6

Names that appear on Employment Eligibility Forms I-9 for employees of Burger King (#2663), 2690 Kirkwood Highway, Newark, DE 19711 that according to ICE indices, are using alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, or showed expired employment authorization cards.

1. Laura Ibarra
2. Maria Carbajal
3. Georgina Carrillo
4. Paola Diaz
5. Leticia Juarez
6. Artemio Martinez
7. Cesar Ortiz
8. Mercedes Rangel
9. Rosalba Reyes
10. Maria Rojas
11. Teresa Rojas

EXHIBIT 7

Names that appear on Employment Eligibility Forms I-9 for employees of Burger King (#3801), 1530 N. Dupont Highway, New Castle, DE 19720 that according to ICE indices, are using alien registration numbers that were issued to persons who do not match the corresponding employee names shown on the Forms I-9, or showed alien registration numbers that have never been issued by U.S. Citizenship and Immigration Services, or showed expired employment authorization cards.

1. Piedad Benitez
2. Angela Canongo-Ruiz
3. Jorge Cantoran
4. Elizabeth Carrera
5. Tomasa Castaneda
6. Miguel Galan
7. Eva Martinez
8. Maria Perez
9. Beatriz Ruiz
10. Lucio Torres
11. Felix Torres

Attachment A
DESCRIPTION OF SUBJECT PREMISES

Burger King restaurants #101, #466, #684, #1068, #2106, #2663, and #3801 are all single story buildings. They are composed of white brick. A blue awning-like overhang decorates the exterior. The Burger King logo and sign is placed on the overhang in the front of each building. The buildings are trimmed in red and yellow. Large windows surround the buildings, many of which are decorated with advertisement posters. Each building has at least two doors for patrons, and at least one for employees. The buildings are surrounded by a parking lot with access to the street. Within the parking lots, Burger King restaurants have a drive-thru area and a drive-thru window. A free standing "Burger King" sign near each of the buildings can be observed from the street.

Attachment A (Continued)
DESCRIPTION OF SUBJECT PREMISES
Burger King #1068
30 S. Chapel Street, Newark, DE 19711



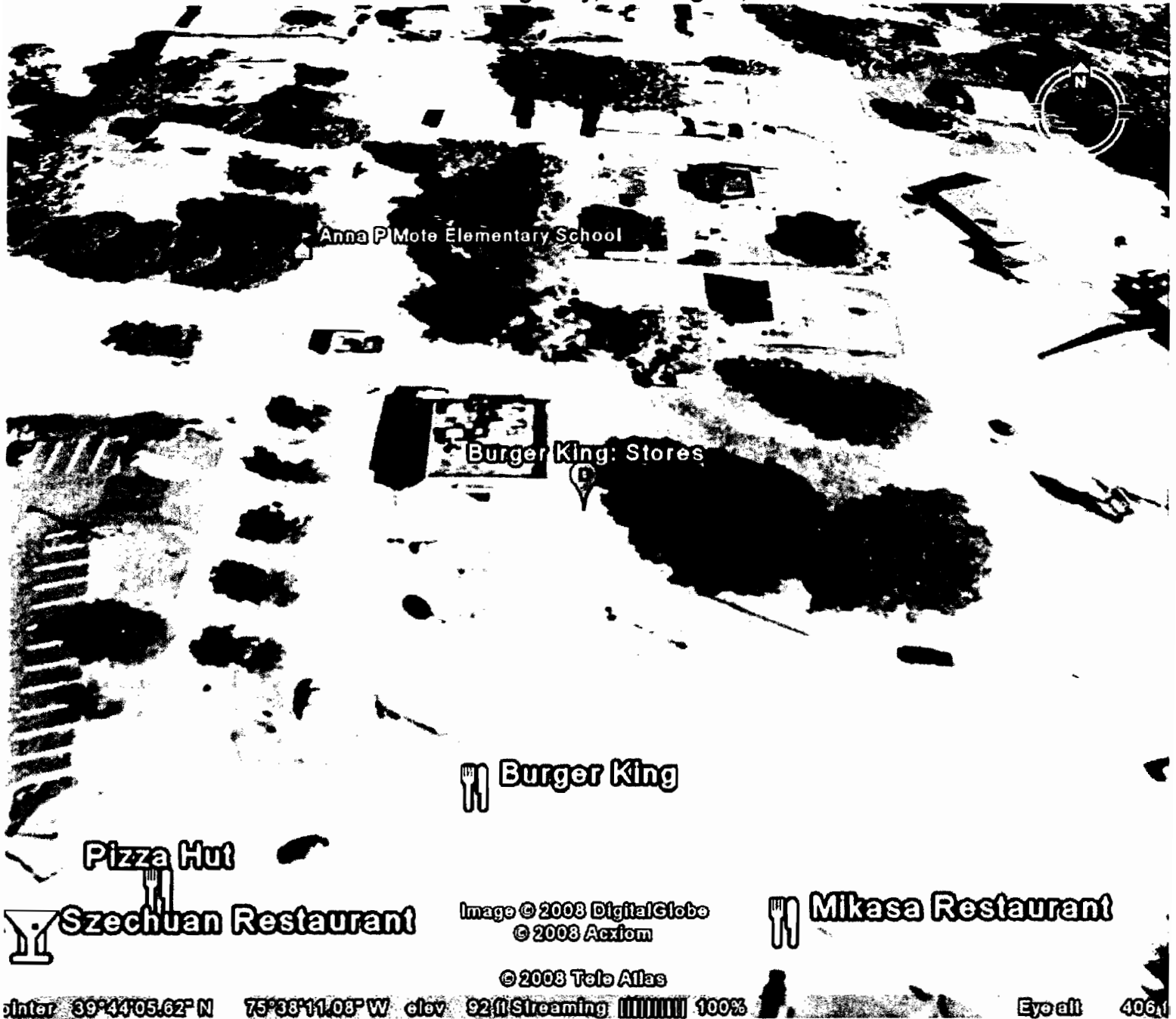
Attachment A (Continued)
DESCRIPTION OF SUBJECT PREMISES

Burger King #2663
2690 Kirkwood Highway, Newark, DE 19711



Attachment A (Continued)
DESCRIPTION OF SUBJECT PREMISES

Burger King #466
3607 Kirkwood Highway, Wilmington, DE 19808



Attachment A (Continued)
DESCRIPTION OF SUBJECT PREMISES

Burger King #101
2802 Concord Pike, Wilmington, DE 19808



Attachment A (Continued)
DESCRIPTION OF SUBJECT PREMISES

Burger King #684
2911 Philadelphia Pike, Claymont, DE 19703



Attachment A (Continued)
DESCRIPTION OF SUBJECT PREMISES

Burger King #3801

1530 N. Dupont Highway, New Castle, DE 19720



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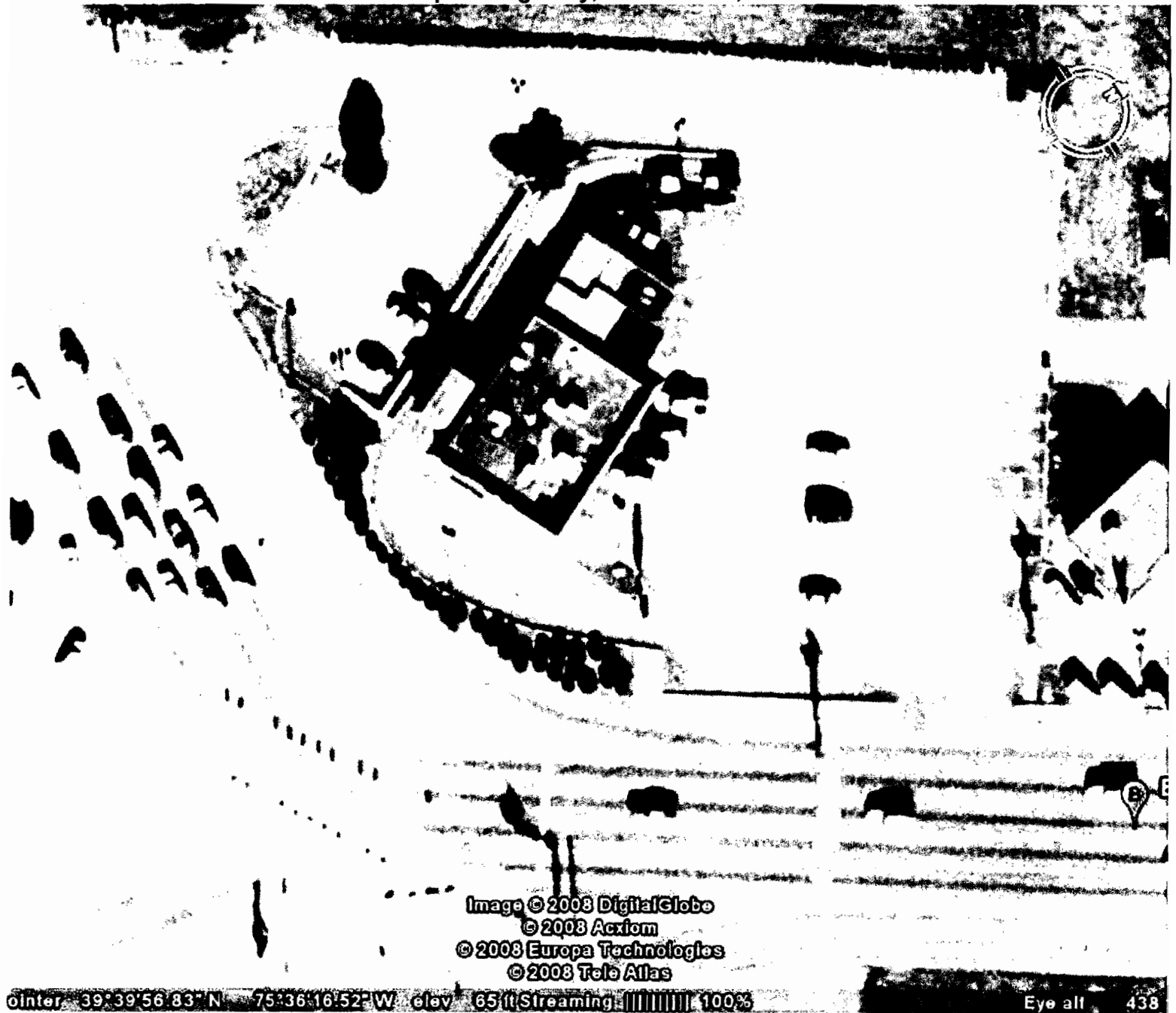
© 2008 Tele Atlas

center 39°41'26.96" N 75°34'48.89" W elev 65 ft Streaming 100%

Eye alt 551 ft

Attachment A (Continued)
DESCRIPTION OF SUBJECT PREMISES

Burger King #2106
101 N. Dupont Highway, New Castle, DE 19720



Attachment B
DESCRIPTION OF ITEMS TO BE SEARCHED FOR AND SEIZED

1. Aliens who are not lawfully entitled to reside or work within the United States and who are employed at present within Burger King franchises #101, #466, #684, #1068, #2106, #2663, #3801.
2. Counterfeit, altered, or imposter documents possessed and/or used by the aliens who are not lawfully entitled to reside or work within the United States and who are employed at present within Burger King franchises #101, #466, #684, #1068, #2106, #2663, #3801.